

Exhibit D



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

INDEX NO. 601661-07  
DATE FILED: MAY 17, 2007

JAMES RUSSO

against

Plaintiff(s)

MP222 LLC, et al

Defendant(s)

STATE OF NEW YORK, COUNTY OF NASSAU, SS.:

AFFIDAVIT OF SERVICE

William J. Wittenhagen being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides at Hicksville, NY. That on May 31, 2007 at 12 09 PM, at 400 Oak Street, Garden City, NY 11530 deponent served the within Order To Show Cause

on New York State Department of Taxation and Finance

a(n) defendant herein, by delivering thereat a true copy thereof to Greg Guida, Asst. Manager personally, deponent knew said defendant herein so served to be the defendant herein so described, and knew said individual to be an authorized agent thereof. Deponent asked said individual if they were able to accept on behalf of said defendant herein and they responded with an affirmative.

Deponent describes the individual served as follows: Gender: Male Skin Color: White Hair Color: Brown  
Age: 41 - 45 Yrs. Height: 5' 9" - 5' 10" Weight: 146 - 180 Lbs. Other: Person served wore glasses

Sworn to before me on this 1st day of June, 2007

JASON A. SACONE  
NOTARY PUBLIC, State of New York  
No. 01SA6001537, Qualified in Nassau County  
Commission Expires January 20, 2010

William J. Wittenhagen  
Server's Lic. #

Affidavit #9988562

ATTORNEY: Agins, Siegel & Reiner, LLP, Richard C. Agins, Esq Ph: 212-447-5599  
ADDRESS: 386 Park Avenue South New York NY 10016 File No.:

Exhibit E



# AGINS, SIEGEL, REINER & BOUKLAS, LLP

Attorneys-at-Law

Richard C. Agins  
Irwin Siegel  
Glenn A. Reiner  
Philip V. Bouklas

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Richard H. Del Valle  
Jason D. Boroff  
Jessica I. Karyo  
Brian M. Hasher  
Rachel Nataneli

BY APPOINTMENT ONLY  
200 GARDEN CITY PLAZA  
GARDEN CITY, NEW YORK 11530

Carl D. Bernstein  
Solomon J. Freedman  
William Slivka  
Richard G. Kaufman  
Charles M. Newman  
Counsel

October 3, 2007

WWW.ASRLAW.COM

## VIA OVERNIGHT DELIVERY

Mr. Philip Matthew  
New York State Department of Taxation and Finance  
80-02 Kew Gardens Road  
Kew Gardens, New York 11415

**Re: New York State Department of Taxation and Finance v. James Russo  
New York State Tax Warrant Index Number 3339074650016**

Dear Mr. Matthew:

First, let me thank you for your assistance in agreeing to assist us to clarify this matter. Enclosed, please find a copy of the Order to Show Cause; which I now realize was not served at your office, as I instructed my process server, but, at your offices at 400 Oak Street, Garden City, New York as evidenced by the enclosed copy of the Affidavit of Service, a copy of the Notification of Removal from the New York State Supreme Court to the United States District Court for the Southern District of New York; and, a copy of the Order for an Initial Pre-Trial Conference issued by Judge William H. Pauley, III, of the Federal court, which was held on September 28, 2007.

At the present time, based on the instructions of Judge Pauley, the parties for all of the other known Defendants are preparing a Stipulation of Settlement confirming which judgments and/or liens are against James Russo, the owner of the Units being sold, and, which, therefore, have to be paid at the Closing, and which are against James A. Russo, the son, and therefore do not have to be paid at the Closing.

AGINS, SIEGEL, REINER & BOUKLAS, LLP

October 3, 2007

Page 2

What I would request from your counsel would be a Notice of Appearance and then the agreement by the by State of New York, Department of Taxation and Finance, to a provision in the Stipulation of Settlement which would confirm that its judgments are against James A. Russo, not against James Russo, and, therefore, are not required to be paid at the Closing, and are not liens against the Units being sold.

Needless to say, I'm more than happy to discuss with you this with your counsel, and either of you should feel free to call me at anytime.

Very truly yours,

Richard C. Agins

CC: James Russo

Exhibit F



\*\*\*\*\*  
\*\*\* MULTI TX/RX REPORT \*\*\*  
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TX/RX NO 0107  
PGS. 50  
TX/RX INCOMPLETE  
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TRANSACTION OK  
(1) 16312312405  
(2) 12125218149  
ERROR INFORMATION  
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## AGINS, SIEGEL, REINER & BOUKLAS, LLP

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### TELECOPIER COVER SHEET

Carl D. Bernstein  
Solomon J. Freedman  
William Slivka  
Richard G. Kaufman  
Charles M. Newman  
Counsel

Sender's E-Mail Address:  
RCA@ASRBLAW.COM

November 14, 2007

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TO: Alan Gitter, Esq.

COMPANY: New York State Department of Law

TELECOPIER: 631-231-2405

RE: JAMES RUSSO v. MP222 LLC, et al.  
U.S.D.C.S.D.N.Y. File No. 07 Civ. 5469 (WHP)

FROM: Richard C. Agins Esq.

# AGINS, SIEGEL, REINER & BOUKLAS, LLP

Attorneys-at-Law

Irwin Siegel  
Richard C. Agins  
Glenn A. Reiner  
Philip V. Bouklas

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TO: Alan Gitter, Esq.

COMPANY: New York State Department of Law

TELECOPIER: 631-231-2405

RE: JAMES RUSSO v. MP222 LLC, et al.  
U.S.D.C.S.D.N.Y. File No. 07 Civ. 5469 (WHP)

FROM: Richard C. Agins, Esq.

CC: Jim Russo - 212- 521-8149

NUMBER OF PAGES (INCLUDING THIS PAGE): 47

MESSAGE: Mr. Gitter. As per our conversation yesterday. Once again, thank you for your cooperation and consideration in assisting us to bring this matter to a swift conclusion.  
.....Rich Agins



**AGINS, SIEGEL, REINER & BOUKLAS, LLP**

Richard C. Agins  
Irwin Siegel  
Glenn A. Reiner  
Philip V. Bouklas

Attorneys-at-Law

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Carl D. Bernstein  
Solomon J. Freedman  
William Slivka  
Richard G. Kaufman  
Charles M. Newman  
Counsel

November 14, 2007

**VIA FAX**

TO: Alan Gitter, Esq.  
New York State Department of Law  
Fax No.: 631-231-2405

WWW.ASRBLAW.COM

**Re: JAMES RUSSO v. MP222 LLC, 222 EAST 95<sup>TH</sup> STREET  
OWNERS CORP., COMMISSIONER OF SOCIAL SERVICES OF THE  
CITY OF NEW YORK, NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF  
FINANCE, MERRILL LYNCH CREDIT CORPORATION and the  
INTERNAL REVENUE SERVICE OF THE UNITED STATES OF  
AMERICA,**

**Supreme Court, State of New York, Index No. 601661-07**

**Removed to:**

**United States District Court for the Southern District of New York  
File No. 07 Civ. 5469 (WHP.)**

Dear Mr. Gitter:

First and foremost, let me thank you for agreeing to deal with this issue as expeditiously as possible.

At various times, both James Russo (SS# 070-18-7467), the Plaintiff/father, and James A. Russo (SS# 088-58-4259), the son, used the addresses of or 29-01 Amboy Road, Staten Island, New York 10306, as well as 222 East 95<sup>th</sup> Street, New York, New York. James A. Russo, the son, was never an owner of the units at 222 East 95<sup>th</sup> Street, New York, New York or 29-01 Amboy Road, Staten Island, New York 10306, but, maintained a place of business at 4 East 65<sup>th</sup> Street, New York, New York.

I apologize for sending you too much paper, but, for ease of review, I have marked each page with a number in the lower right-hand corner, and have placed large asterisks next to any references to the State. Accordingly, I am enclosing, for your review:

AGINS, SIEGEL, REINER & BOUKLAS, LLP

November 14, 2007

Page 2

- The letter to Philip Matthew of NYS (#1 &2);
- The Affidavit of Service on NYS (#2A);
- The pages from the title report which reflect NYS judgments or warrants against James A. Russo, the son, not against James Russo, the Plaintiff/father (# 3 through #10A);
- A copy of the Order to Show Cause (#13 through #15) and supporting Affidavits brought to the New York State Supreme Court without the exhibits (#16 through #31);
- A copy of the Stipulation of Settlement as it now stands, subject to additional changes by the other Defendants (#32 through #43).

Based on the Order of Mr. Justice Pauley of the Southern District, the provision on page #32, the fourth "Whereas" clause, requires us to take a default judgment against the State of New York, since you have not appeared in this action. However, I would propose removing that paragraph and adding the following to the Stipulation:

**PROVISIONS AS TO THE NYS DEFENDANT**

1. The New York State Department of Taxation and Finance hereby appears in this action and acknowledges service of the Order to Show Cause dated May 21, 2001, originally brought in the Supreme Court of the State of New York, County of New York, seeking Declaratory Judgment.
2. NYS acknowledges that a New York State Tax Warrant was filed with the County Clerk of New York County, docketed on September 7, 2005, effective as of August 29, 2005, in the amount of \$52,108.77, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.
3. NYS acknowledges that a Judgment filed with the County Clerk of New York County, was entered in Richmond County docketed on July 20, 2006, effective April 19, 2004, in the amount of \$485,396.11, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.
4. NYS acknowledges that a Judgment filed with the County Clerk of New York County, was entered in Richmond County docketed on July 20, 2006, effective April 19, 2004, in the amount of \$21,326.26, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.
5. NYS acknowledges that a Judgment filed with the County Clerk of New York County, was entered in Richmond County docketed on July 20, 2006, effective

AGINS, SIEGEL, REINER & BOUKLAS, LLP

November 14, 2007

Page 3

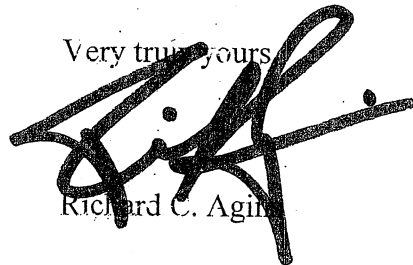
October 25, 2004, in the amount of \$119,424.62, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.

6. NYS acknowledges that a Judgment filed with the County Clerk of New York County, was entered in Richmond County docketed on July 20, 2006, effective October 25, 2004, in the amount of \$10,627.44, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.
7. NYS acknowledges that a Judgment filed with the County Clerk of New York County, was entered in Richmond County docketed on July 20, 2006, effective March 2, 2005, in the amount of \$64,230.15, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.
8. NYS acknowledges that a Judgment filed with the County Clerk of New York County, was entered in Richmond County docketed on July 20, 2006, effective January 6, 2006, in the amount of \$6,015.93, against a James Russo who is not the Plaintiff in this action and said Judgment is not a lien on the Units herein.
9. NYS acknowledges that it filed a State Tax Warrant with the New York State Department of State docketed and filed on September 7, 2005, in the amount of \$52,108.77 against a James Russo who is not the Plaintiff in this action and said State Tax Warrant is not a lien on the Units herein.

As you can see, this matter has dragged on for some time, and, we have another appearance scheduled before Judge Pauley on Friday, November 30, 2007. Accordingly, I would genuinely appreciate it, if you could advise me if this language is acceptable before that date so I can advise the Court. If it is acceptable, I will, of course, have it incorporated into the Stipulation for the review of all parties, add a signature block in the manner you direct me to, and, of course, will forward a copy to you for execution when all the other details are finalized.

Once again, let me thank you for your cooperation in this matter.

Very truly yours,



Richard C. Agins

Exhibit G



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
JAMES RUSSO,

Plaintiff,

- against -

:  
:  
:  
: AFFIDAVIT OF  
SERVICE

MP222 LLC, 222 EAST 95<sup>th</sup> STREET  
OWNERS CORP., COMMISSIONER OF SOCIAL  
SERVICES OF THE CITY OF NEW YORK, NEW  
YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE, NEW YORK CITY DEPARTMENT  
OF FINANCE, MERRILL LYNCH CREDIT  
CORPORATION and the INTERNAL REVENUE  
SERVICE OF THE UNITED STATES OF AMERICA,

Defendants.  
----- X

UNITED STATES OF AMERICA,

Counterclaim, Crossclaim  
and Third-Party Plaintiff,

- against -

JAMES RUSSO,

Counterclaim Defendant.

-and-

MP222 LLC, 222 EAST 95<sup>th</sup> STREET  
OWNERS CORP., COMMISSIONER OF SOCIAL  
SERVICES OF THE CITY OF NEW YORK, NEW  
YORK STATE DEPARTMENT OF TAXATION  
AND FINANCE, NEW YORK CITY DEPARTMENT  
OF FINANCE, MERRILL LYNCH CREDIT  
CORPORATION,

Crossclaim Defendants,

and

JAMES A. RUSSO, JOHN DOES NOS. 1-10 and  
JANE DOES NOS. 1-10,

Third-Party Defendants.

-----X  
STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

JILLIAN LORE, being duly sworn, deposes and says:

1. I am not a party to this action, am over 18 years of age, and reside in the County of New York, New York.
2. On December 13, 2007, at 9:01 a.m., I served of a copy of the Summons and Complaint, the Notice or Removal and the Notification of Removal to the United States District Court for the Southern District of New York, to complete service on Defendant NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE,, by delivering same by hand to:

Managing Attorney's Office  
Office of the Attorney General of the State of New York  
New York State Department of Law  
120 Broadway - 24th Floor  
New York, New York 10271-0332

  
JILLIAN LORE

Sworn to before me this  
13<sup>th</sup> day of December 2007

  
Notary Public

RICHARD C. AGINS  
Notary Public, State of New York  
No. 02AG5028148  
Qualified in New York County  
Commission Expires 08/31/2010 <sup>2</sup>



\*\*\*\*\*  
 \*\*\* MULTI TX/RX REPORT \*\*\*  
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 (2) 12125218149  
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## AGINS, SIEGEL, REINER & BOUKLAS, LLP

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January 3, 2008

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TO: Alan Gitter, Esq.  
 COMPANY: New York State Department of Law  
 TELECOPIER: 631-231-2405

RE: JAMES RUSSO v. MP222 LLC, et al. -U.S.D.C.S.D.N.Y. File No. 07 Civ. 5469 (WHP)

FROM: Richard C. Agins, Esq.  
 CC: Jim Russo - 212- 521-8149  
 NUMBER OF PAGES (INCLUDING THIS PAGE): 11

MESSAGE: Mr. Gitter As per our previous conversations the Stipulation of Settlement



AGINS, SIEGEL, REINER & BOUKLAS, LLP

Attorneys-at-Law

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January 3, 2008

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COMPANY: New York State Department of Law  
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FROM: Richard C. Agins, Esq.  
CC: Jim Russo - 212- 521-8149  
NUMBER OF PAGES (INCLUDING THIS PAGE): 11

MESSAGE: Mr. Gitter. As per our previous conversations, the Stipulation of Settlement is virtually final and ready to be presented for signature to all attorneys and to Judge William Pauley of the USDC-SDNY with a provision in it that Plaintiff submit a default judgment against the State of New York. I am attaching a copy of my Affidavit in support of the Default Judgment and a copy of the proposed Default Judgment. Please advise if your office intends to appear in this action and/or answer the Complaint; or, if it will not do anything; or, if it may now be willing to enter into the Stipulation. Needless to say, if you are willing to consider the third alternative, I will immediately send a full copy to you. I would appreciate a written response as soon as possible, but if I do not hear from you, I will submit these documents in ten days from the date hereof. Once again, thank you for your consideration in assisting us to bring this matter to a swift conclusion. ....Rich Agins